IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.9827 OF 2004

The Secretary, Manjara Charitable
Trust and Ors. .. .. ..Petitioners

Versus

Mrs.Sulochana R.Tambe & Ors. .. ..Respondents

Mr.A.G.Kothari for petitioners

Mr.M.V.Limaye for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 23rd MARCH, 2006.

P.C.:

1. Heard the learned counsel for both the parties.

2. Rule, rule made returnable forthwith by consent.

3. The petition is filed by the petitioners against the order passed by Presiding Officer, School Tribunal, New Mumbai dated 5th October, 2004 allowing the appeal of

the respondent and order dated 3rd October, 1998 passed by the Petitioner was set aside on the ground that it was "otherwise termination" within the meaning of the provision of Maharashtra Employees of Private Schools Act. Further it was directed that the Respondents shall reinstate the appellant within particular period and the respondent was also held entitled to all consequential benefits of continuity of service and difference of pay etc.

4. The Respondent filed appeal being Appeal No.56 of 1999 before the School Tribunal, New Mumbai submitting that she was working as Peon in the school run by the present petitioners at New Mumbai since the year 1995. She was appointed in a secondary section. She was allegedly otherwise terminated on 3.10.1998. During the span of her service, she was technically discontinued and reappointed every year. She was not directly terminated, however, she was transferred to primary section of English Medium. After her transfer the aid was granted to the secondary section in the month of June 2000 and because of her transfer to primary section English Medium she had sustained monetary loss and other pensionary benefits.

. The Petitioner-Management contested the appeal, inter alia, submitting that the Management had ample

authority to transfer any employee from one section to another. The appellant had been continuous in service of the respondent was not affected nor any secondary benefits were reduced and therefore, it was submitted that the appeal was not maintainable under Section 9 of the said Act, because it did not amount to termination by the Management. It was further submitted that the service condition of the respondent and her transfer from secondary section to primary section English Medium remained unaffected and there was no harm and prejudice caused to the appellant and appeal sought to be dismissed.

5. The Presiding Officer of the Tribunal after hearing both the parties came to the conclusion that whether the transfer of the respondent dated 3.10.1998 from secondary section to the English Medium primary section amounted to "otherwise termination" and as such the order passed by the Management was liable to be set aside and the impugned order came to be passed. Hence the present petition.

6. At the outset, it may be noted that the Tribunal in its Judgment has observed that definition of "otherwise termination" is given in Section 9 of the MEPS Act, 1977, which is effectually wrong statement. Moreover, if we go to the relevant provision which defines the term

"otherwise termination" it is clear that "otherwise terminated" would include forced resignation, resignation taken on blank paper while making appointment, during period of probation, termination on account of retrenchment, on account of abolition of post, termination for working in coaching classes, oral termination etc. In my considered view, the case at hands does not come within the definition of "otherwise termination" under the said Act.

. Once we reach this position, the provision of Rule 41 of Rules 1981 under the said Act also become relevant which provides norms of the transfer, they are as follows:

(a) administrative grounds, that is administrative exigencies or

(b) on probation

(c) at the request of employee himself

(d) such transfer should not adversely affect the employees pay, pay scale or any other pecuniary benefits.

(e) Normally, transfer orders are not issued

in the middle of the academic term.

On these basis the learned Member of the Tribunal has considered the present case holding that the norm described in clause (d) of Rule 41 is breached, however, considering the discussion made by the Tribunal itself, it is clearly seen that the position is otherwise. If we perused the Schedule-C to the M.E.P.S. Act which stipulates the pay of non-teaching staff, it shows that the cadre pay scale of the peon is Rs.750-940, irrespective of the clause the person is working as a peon. Now it is an admitted position that the present respondent is working as peon in secondary division of the school run by the Management and her transfer to the primary section, therefore, there cannot be any change in the cadre pay of the peon because her service as peon is continued and no pecuniary loss has been caused to her.

7. The learned counsel for the respondent submitted that clause (e) of Rule 41 also would be applicable because such transfer was effected in the month of October of the said year. However, it is needless to mention that the wording of clause (e) is that the transfer orders are not issued in the middle of the academic term. Obviously, therefore, first term of the said academic year had come to an end and therefore, there is no infringement of

clause (e) of Rule 41 of Rules 1981 also.

8. It was further submitted on behalf of the petitioner that the transfer was effected as the respondent was rendered surplus in the secondary section and therefore, in order to save her services she was transferred to the primary section. It was come definitely under the provisions of clause (a) of Rule 41, which shows that it was administrative exigencies to protect the services of the respondent and not for any departmental reason against the respondent.

9. Be as it may, the fact remains that the Member of the Tribunal has committed obvious error in interpreting the relevant rules as well as the provision of Section 9 of the said Act and thus the order is required to be set aside.

10. In the result, the rule is made absolute. The Petition is allowed in terms of prayer clause (a) and stands disposed of with no order as to costs.

10. It is to be noted that the advocate for the petitioner has made statement that the pecuniary benefits as per the rules would be continued in case of the respondent.